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2019 JAN -8 AM 8:40

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CLERK OF SUPERIOR COURT
YM

Kevin J. Oursland
Deputy Public Defender
Attorney for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE

| | | |
|-------------------|---|---------------------------------|
| STATE OF ARIZONA, |) | No. CR201800252 |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | DEFENDANT'S RESPONSE TO STATE'S |
| |) | MOTION TO ALLOW TELEPHONIC |
| |) | APPEARANCE OF OUT OF STATE |
| JUSTIN COPELAND, |) | WITNESSES |
| |) | |
| Defendant. |) | (Hon. Laura Cardinal, Div. 1) |
| |) | |

The defendant, Justin Copeland, by and through counsel undersigned, responds to State's Motion to Allow Telephonic Appearance of Out of State Witnesses.

Contrary to the State's claim that the defendant's objection "appears to be geared at nothing more than needlessly increasing costs or prejudicing the State in its ability to satisfy its burdens under Rule 404(b) and (c)," the objection is predicated solely on a defendant's Sixth Amendment right to confront and cross-examine his accusers. Confrontation entails not only the questioning of a witness, but also assessing the demeanor and behavior of the witness, which can only take place if the witness personally appears. *State ex rel. Montgomery v. Padilla*, 237 Ariz. 263 (2015). When weighing the financial burden on the State of arranging for the personal appearance of accusers against securing Mr. Copeland's right to confront his accusers, the Constitution must win out.

RESPECTFULLY SUBMITTED this 8th day of January, 2019.

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2019 JAN -9 AM 9:17
J. J. HUMLEY
CLERK OF SUPERIOR COURT
BY: [Signature]
DEPUTY

Kevin J. Oursland
Deputy Public Defender
Attorney for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE

| | | |
|-------------------|---|-------------------------------|
| STATE OF ARIZONA, |) | No. CR201800252 |
| |) | |
| Plaintiff, |) | |
| |) | DEFENDANT'S MOTION FOR |
| vs. |) | RECONSIDERATION |
| |) | |
| JUSTIN COPELAND, |) | |
| |) | (Hon. Laura Cardinal, Div. 1) |
| Defendant. |) | |

The defendant, Justin Copeland, by and through counsel undersigned, moves this Court to reconsider its decision to grant plaintiff's Motion to Allow Telephonic Appearance of Out of State Witnesses.

On Monday, January 7, 2019, defendant received plaintiff's Motion to Allow Telephonic Appearance of Out of State Witnesses. Defendant filed his response with the Court early Tuesday morning. At 4:03 p.m. on Tuesday, January 8, defendant received an email from the Court administrator that the proposed Order granting plaintiff's motion had been granted. Defendant's objection to plaintiff's motion was based on Mr. Copeland's Sixth Amendment right to confront the witnesses against him. The United States Constitution and Arizona case law are quite clear that the right of an accused to confront witnesses includes the right to confront those witnesses face-to-face. U.S.C.A. Const.Amend. 6, *State ex rel. Montgomery v. Padilla*, 237 Ariz. 263 (2015). "A

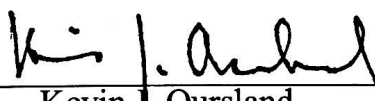
criminal defendant has the constitutional right to confront the witnesses against him face-to-face, and this right is implemented primarily through cross-examination.” *Kentucky v. Stincer*, 482 U.S. 730, 736 (1987); *State v. Vess*, 157 Ariz. 236, 237-38 (App.1988).

Furthermore, the right of confrontation cannot be abrogated absent an “important public policy” that must be established by the plaintiff. The fact that arranging for the personal appearance of the witnesses against Mr. Copeland would require the plaintiff to pay for air travel and hotel accommodations, while unfortunate, does not rise to the level of important public policy necessitating the denial of Mr. Copeland’s Sixth Amendment right.

For these reasons, the defendant respectfully asks this Court to rescind its Order granting plaintiff’s Motion to Allow Telephonic Appearance of Out of State Witnesses, and upon due consideration, taking into account defendant’s constitutional right to confront any witnesses against him face-to-face, deny the motion.

RESPECTFULLY SUBMITTED this 9th day of January, 2019.

MARK A. SUAGEE
COCHISE COUNTY PUBLIC DEFENDER

By 
Kevin J. Oursland
Deputy Public Defender

Copy of the foregoing delivered this 9th day of January, 2019 to:

Hon. Laura Cardinal
Judge of the Superior Court
Bisbee, AZ 85603
via inter-office mail

Sara Ransom
Deputy County Attorney
Bisbee, AZ 85603
via inter-office mail

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FILED
2019 JAN -9 PM 4:39

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CLERK OF SUPERIOR COURT
BY *YM*

**Kevin J. Oursland
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE

| | | |
|-------------------|---|-------------------------------|
| STATE OF ARIZONA, |) | No. CR201800252 |
| |) | |
| Plaintiff, |) | |
| |) | MOTION TO CONTINUE |
| vs. |) | 404 HEARING |
| |) | |
| JUSTIN COPELAND, |) | (Hon. Laura Cardinal, Div. 1) |
| |) | |
| Defendant. |) | |

The Defendant, JUSTIN COPELAND, by and through undersigned counsel, hereby moves the Court to continue the Evidentiary Hearing currently scheduled for Thursday, January 10, 2019 at 9:00 a.m. to allow Defendant time to prepare and file a petition for special action to the Arizona Court of Appeals.

RESPECTFULLY SUBMITTED this 9th day of January, 2019.

MARK A. SUAGEE
COCHISE COUNTY PUBLIC DEFENDER

By *Kevin J. Oursland*
Kevin J. Oursland
Deputy Public Defender